

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------------|---|----------------------|
| IN THE MATTER OF: |) | U.S. EPA DOCKET NO. |
| |) | |
| DEAD CREEK SITE NO. 60 |) | ADMINISTRATIVE ORDER |
| |) | BY CONSENT |
| |) | |
| RESPONDENTS: |) | |
| Monsanto Company |) | RE: REIMBURSEMENT OF |
| Cerro Copper Products Company |) | RESPONSE COSTS. |
| Midwest Rubber Reclaiming |) | |
| Ruan Transportation |) | |

JURISDICTION

This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(h)(2). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E.

This Administrative Order on Consent is issued to Monsanto Company, Cerro Copper Products Company, Midwest Rubber Reclaiming and Ruan Transportation (hereinafter "Respondents"). The purpose of this Consent Order is for EPA to recover costs incurred at or in connection with the Dead Creek Site No. 60, also known as Dead Creek Segment B, located in Sauget, Illinois, and to resolve the liability of the Respondents for such response costs. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order. This Consent Order will be binding upon EPA and shall be binding upon Respondents, their directors, officers, employees, agents, successors and assigns. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her.

STATEMENT OF FACTS

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois (hereinafter "the site").

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. The Illinois Environmental Protection Agency has indicated to U.S. EPA that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents' involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

EPA DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 60, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

RESPONDENTS POSITION

1. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of any

past or future liability or of U.S. EPA's Statement of Facts or Determinations.

2. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

3. Within twenty days of the effective date of this Order, Respondents shall send a photostatic copy of their check to:

Elizabeth Doyle
Assistant Regional Counsel
U.S. EPA, Region V (5CS-TUB-4)
230 South Dearborn
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).
5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of August 30, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

- (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
 - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
 8. EPA and Respondents agree that Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order does not constitute an admission of any liability by any Respondent and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact and Determinations contained in this Consent Order.
 9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of the EPA activities in installing a chainlink fence around the site portion of Dead Creek as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of such chainlink fence installation activities.
 10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
 11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By:

Valdas V. Adamkus
U.S. Environmental Protection
Agency v.

September 27, 1990
Date

By:

Warren L. Smull

August 9, 1990
Date

Manager, Remedial Projects
Title

Monsanto Company
Company

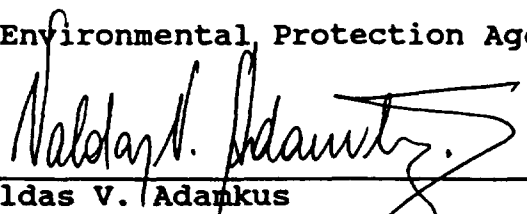
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U.S. Environmental Protection
Agency v.

September 27, 1990
Date

By:


Paul Tandler

August 13, 1990

Date

Vice President

Title

CERRO COPPER PRODUCTS CO.

Company

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U.S. Environmental Protection
Agency v.

September 27, 1990
Date

cc By:

Treasurer
Title

Ruan Transport Corporation
Company

8/15/90
Date

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U.S. Environmental Protection
Agency v.

September 27, 1990
Date

By:

U.P. & G.M.
Title

Midwest Rubber Reclaiming Div.
Company

A Div. of Empire Chem Inc.

8/17/90
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

JAN 22 1990

DATE:

SUBJECT: Cost Recovery Close Out Action for Removal Action at Dead Creek, Sauget
Illinois. Superfund Site# 60.

FROM: Elizabeth Doyle *Elizabeth Doyle* and
Regional Counsel Staff Attorney

Jack Barnette *Jack Barnette*
On Scene Coordinator *On Scene Coordinator*

TO: File

DESCRIPTION OF SITE AND REMOVAL ACTION

The site is an abandoned surface/subsurface disposal area located in Sauget, Illinois. Elevated levels of PCBs and chlorinated benzenes have been discovered in the creek bottom sediment. The source of the contamination is somewhere upstream of the actual Dead Creek Site. Because of unimpeded public access to the site, it was decided that the erection of a fence was necessary to prohibit easy entry by passers-by. To that end, 4,146 feet of cyclone fence was erected to enclose the contamination (Reference 1).

COSTS INCURRED AND COST RECOVERY ACTIONS TO DATE

A December 18, 1989, SPUR report shows that \$49,974.51 has been spent by the United States Environmental Protection Agency (U.S. EPA) for this action (Reference 2).

LIABILITY OF POTENTIALLY RESPONSIBLE PARTIES

After reviewing information recently provided by the Illinois EPA (IEPA), U.S. EPA sent demand letters to 4 PRPs. Because of the relatively small amount of money expended at the Site, no further enforcement action will be taken if these PRPs decline to pay U.S. EPA costs.

ENFORCEMENT ACTIONS

Demand letters were sent by U.S. EPA to 4 PRPs on December 27, 1989, (Reference 3). No response has been received to date.

COST RECOVERY DECISION

As discussed previously, if U.S. EPA does not receive a favorable response to its demand letters, no further cost recovery action will be taken. This memorandum is submitted to document this decision, which was made prior to October 17, 1989, the most conservative Statute of Limitations date which may potentially apply to recovery of these costs.

RECOMMENDATION

Regardless to the response to our demand letters, it is recommended that no further action be taken in this case due to the small amount of money involved.

Approval:

Basil Constantelos 2-1-90
Basil Constantelos, Director Date
Waste Management Division

Bertram Frey 1/22/90
Bertram Frey, Acting Date
Regional Counsel

Disapprove:

Basil Constantelos, Director Date
Waste Management Division

Bertram Frey, Acting Date
Regional Counsel

cc: Emil Knutti, WH-527
Vince D'Aloia, Superfund Accounting
Lynn Peterson, ORC Cost Recovery Coordinator
Oliver Warnsley, Chief, RP/CR Unit
Robert Bowden, Chief, EERB

REFERENCE

1. Polrep #3 for Dead Creek dated November 5, 1982.
2. SPUR Report dated December 18, 1989, prepared by the U.S EPA Region V, Financial Management Branch.
3. Demand letter dated December 27, 1989 sent by U.S. EPA Program Management Branch.

File.

JAN 22 1990

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Elizabeth Doyle
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and

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On Scene Coordinator

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Waste Management Division

Date

Bertram Frey, Acting
Regional Counsel

Date

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Oliver Warnsley, Chief, RP/CR Unit
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5HSM-12;RP/CRU:tm:10/24/89:JOAKS'S DISK 1: DEADCREK.MEM

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**Responsible Party/Cost Rec ry Unit
Routing Form**

RP-01

Please fill in the appropriate section(s).

Site Name Dead Creek

Author L. Dorsey Phone# _____

| | | | | |
|--------------------|---|-----------------|---------------------------|-----------------|
| A. (AUTHOR) | <u>Item</u> | <u>Quantity</u> | <u>Item</u> | <u>Quantity</u> |
| | <input checked="" type="checkbox"/> Close Out Memo(s) | _____ | _____ Follow-Up Letter(s) | _____ |
| | _____ Confidential Business | _____ | _____ Information Request | _____ |
| | _____ Information Letter(s) | _____ | _____ Letter(s) | _____ |
| | _____ Demand Letter(s) | _____ | _____ Other | _____ |

| | | | | |
|--------------------------|----------------------------|-------------|----------------------|-------------|
| B. (RP/CRU Sec'y) | <u>General Information</u> | <u>Date</u> | <u>Unit Deadline</u> | <u>Date</u> |
| | Date received for typing | <u>12/4</u> | Rec'd After Sign-Off | _____ |
| | Typist <u>Tahira</u> | <u>12/4</u> | Mailing Deadline | _____ |
| | Diskette # _____ | _____ | Copies Distributed | _____ |

| | | | | |
|--------------------|-----------------------------|-----------------|---------------------------|---------------|
| C. (RP/CRU) | <u>Initial Draft Review</u> | <u>Date</u> | <u>Final Draft Review</u> | <u>Date</u> |
| | Author <u>Dorsey</u> | <u>12/17/90</u> | Author <u>L. Dorsey</u> | <u>1/8/90</u> |
| | Unit Sec'y <u>Tahira</u> | <u>12/4</u> | Unit Sec'y _____ | <u>1/8/90</u> |
| | Unit Chief _____ | _____ | Unit Chief _____ | <u>1/9</u> |
| | Comment(s) _____ | _____ | Comment(s) _____ | _____ |

| | | | |
|----------------------------|----------------|-------------------------------|-------------|
| <u>Final Unit Sign-Off</u> | <u>Date</u> | <u>Clerical (Sign-In/Out)</u> | <u>Date</u> |
| Author <u>L. Dorsey</u> | <u>1/10/90</u> | Unit Sec'y Out _____ | _____ |
| Unit Sec'y <u>MT</u> | <u>1/8/90</u> | Section Sec'y In _____ | _____ |
| Unit Chief <u>OW</u> | <u>1/31/90</u> | Section Sec'y Out _____ | _____ |

| | | | |
|---------------------|------------------------------|----------------|------------------------------|
| D. (Div./RA) | <u>Management Sign-Off</u> | <u>Date</u> | <u>Div. Dir. Sec'y</u> |
| | Section Chief _____ | _____ | Div. Director <u>Pat</u> |
| | Branch Sec'y _____ | _____ | RA Sec'y _____ |
| | Branch Chief <u>SD</u> | <u>1/31/90</u> | Regional Administrator _____ |
| | Assoc. Div. Sec'y _____ | _____ | |
| | Assoc. Div. Dir. <u>Reid</u> | <u>2-190</u> | |

| | | |
|------------------------------|--------------------------------|-----------------------|
| E. (RP/CRU & ORC) | <u>ORC General Information</u> | <u>Phone #</u> |
| Attorney _____ | _____ | _____ |
| Unit to ORC _____ | _____ | Revision to ORC _____ |
| Due Date _____ | _____ | Due Date _____ |
| ORC to Unit _____ | _____ | ORC to Unit _____ |

| | | | |
|-----------------|---------------------------|-------------|---------------------------|
| F. (ORC) | <u>Draft ORC Sign-Off</u> | <u>Date</u> | H. ORC Concurrence |
| | Attorney _____ | _____ | _____ |
| | Section Chief _____ | _____ | _____ |

| | | |
|--------------------------|---------------------------|----------------------|
| G. (ORC) | <u>Final ORC Sign-Off</u> | I. Comment(s) |
| Attorney <u>LD</u> | <u>1-11-90</u> | _____ |
| Section Chief <u>CLP</u> | <u>1-11-90</u> | _____ |
| Branch Chief <u>SD</u> | <u>1/17/90</u> | _____ |
| Division Chief _____ | _____ | _____ |

(See ?)

MGK

Buck

1/18/90

1/22/90

L. Dorsey 6-7451

POK's and Sen. Jones in great back - what are we doing?
 that is addressing this problem
 beyond forcing it off

JAN 22 1990

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and

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On Scene Coordinator

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5HSM-12;RP/CRU:tm:10/24/89:JOAKS'S DISK 1: DEADCREK.MEM

| CONCURRENCE REQUESTED | | | | | | | | | | |
|--------------------------------------|--------|---------|------------|--------------------|-----|--------------------|--------------------|--------------------|--------------------|-----|
| TECHNICAL SUPPORT SECTION, SPMB, OSF | | | | | | | | | | |
| AUTHOR | TYPYST | PRE-REM | TECH. SUPP | PRP | ORC | SEC. CH. | BR. CH. | ADD | WFO | ORA |
| <i>[Signature]</i> | | | | <i>[Signature]</i> | | <i>[Signature]</i> | <i>[Signature]</i> | <i>[Signature]</i> | <i>[Signature]</i> | |

DISK INFORMATION:

[Signature] SPAS 1/11/90

*Arault
there also
problems
with the liability
evidence
not being
complete.
If so, we shall
mention also
difficulties
of proving liability.*

REFERENCE

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